

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

**BATES ENERGY OIL & GAS, LLC**

**v.**

**COMPLETE OIL FIELD SERVICES  
LLC AND SAM TAYLOR**

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**CIVIL ACTION SA:17-CV-00808-XR**

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**COUNTER-PLAINTIFF COMPLETE OIL FIELD SERVICES LLC’S  
MOTION FOR ENTRY OF DEFAULT AGAINST  
COUNTER-DEFENDANT DEWAYNE NAUMANN**

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Pursuant to Rule 55(a) of the Federal Rules of Civil Procedure, Counter-Plaintiff Complete Oil Field Services, LLC (“COFS”) respectfully moves for an entry of default against Counter-Defendant Dewayne Naumann. In support of this request, COFS states the following:

**I.**

**RELIEF SOUGHT AND PROCEDURAL BACKGROUND**

1. COFs moves that, pursuant to Federal Rule of Civil Procedure 55(a), the Clerk of the Court enter a default against Dewayne Naumann who, although properly served, has not responded to COFS’s most recent counterclaim, the Fourth Amended Counterclaim. As shown below, the deadline to answer or otherwise respond to the counterclaim was November 13, 2019.

2. On August 2, 2017, while this lawsuit was still in Texas state court, COFS filed its original counterclaim, naming Bates Energy Oil & Gas, LLC as the only Counter-Defendant, and alleging violations of Texas state law relating to a contractual escrow arrangement and escrow account.

3. On August 23, 2017, COFS removed this case to federal court. (Dkt. No. 1).

4. On September 8, 2017, COFS filed its **First Amended Counterclaim**, adding Dewayne Naumann and Equity Liaison Company as Counter-Defendants. (Dkt. No. 10).<sup>1</sup>

5. On May 21, 2018, COFS filed and served its **Third Amended Counterclaim**, adding the remaining Counter-Defendants, including Tier 1, David Bravo, Lorena Silvestri Bravo, and Unlimited Frac Sand d/b/a Frac Sand Unlimited. (Dkt. No. 68).<sup>2</sup>

6. On February 21, 2019, COFS filed its **Fourth Amended Counterclaim** adding and removing various claims and allegations. (Dkt. No. 116).

7. The only Counter-Defendant who filed an answer to the Fourth Amended Counterclaim was Mark B. Sylla. (Dkt. No. 117).

8. Dewayne Naumann, against whom an entry of default is requested herein, is not a minor, an incompetent person, or currently engaged in military service. *See* Affidavit of Lisa S. Barkley, attached as Exhibit 1. *See* FED. R. CIV. P. 55(a).

## **II.**

### **STATUS OF SERVICE**

9. The Court permitted Mr. Naumann's legal counsel to withdraw from her legal representation of Mr. Naumann on August 15, 2018. (Text Order granting Dkt. No. 101, Motion to Withdraw). The Text Order ordered Mr. Naumann to "notify the Court whether he intends to proceed pro se or obtain counsel within fourteen days." The Clerk was ordered to mail a copy of the Text Order to Mr. Naumann's last known address at 3303 Northland Drive, Suite 307, Austin, Texas 78721. *Id.* Mr. Naumann has never responded to the Court's order.

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<sup>1</sup> A "second" First Amended Counterclaim was filed two days later, on September 11, 2017 (Dkt. No. 12). The refile was a result of a deficiency notice notifying COFS that it had inadvertently used the state court style in the September 9 filing. (Dkt. No. 11). This mistake was corrected with the September 11 filing.

<sup>2</sup> No "Second" Amended Counterclaim was filed. Rather, the next counterclaim filed was the "Third Amended Counterclaim."

10. After COFS's unsuccessful attempts to serve Mr. Naumann with its Fourth Amended Counterclaim immediately after the pleading was filed, on September 30, 2019, the Court granted COFS leave to attempt service of Mr. Naumann at his last known address on Northland Drive. *See* Dkt. No. 136, COFS's Advisory to the Court regarding Dewayne Naumann, and Motion for Leave to Serve Naumann with Fourth Amended Counterclaim, and related Text Order.

11. COFS continued to have additional issues with confirming its service of Mr. Naumann with the Fourth Amended Counterclaim at the Northland Drive address, as the post office could neither confirm that it had delivered the papers to Mr. Naumann, nor return the papers to COFS. Those issues are set forth in Defendant/Counter-Plaintiff Complete Oil Field Service, LLC's Advisory of Service to the Court filed on November 1, 2019. *See* Dkt. No. 141. Ultimately, COFS incurred the cost of a private process server who hand delivered the pleading to Mr. Naumann on October 30, 2019, at his Northland Drive address. *Id.*

12. Mr. Naumann's deadline to file an answer or otherwise respond was November 13, 2019. *See* FED. R. CIV. P. 15(a)(3). Mr. Naumann has never answered or otherwise responded to the Fourth Amended Counterclaim.

### III. AUTHORITIES AND ARGUMENT

13. A default occurs when "a defendant has failed to plead or otherwise respond to the complaint within the time required by the Federal Rules." *N.Y. Life Ins. Co. v. Brown*, 84 F.3d 137, 141 (5<sup>th</sup> Cir. 1996). Thus, Federal Rule of Civil Procedure 55 requires the Clerk to enter a default "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise." FED. R. CIV. P. 55(a); *see*

*also, Pichardo v. Lucky Cousins Trucking, Inc.*, No. 5-160CV-01248-RBF, 2019 U.S. Dist. LEXIS 62469 (W.D. Tex. April 10, 2019).

14. As discussed above, COFS's service of its Fourth Amended Counterclaim was by hand delivery. "A paper is served under this rule by...handing it to the person." FED. R. CIV. P. 5(b)(2).

15. COFS notes that it had accomplished service of Mr. Naumann both in May and September 2019 by mailing the pleading to Mr. Naumann's last known address, the Northland Drive address. *See* FED. R. CIV. P. 5(b)(2)(C). Service under this provision is complete upon mailing. But, because of the peculiar circumstances with the post office and Mr. Naumann, COFS took the additional step of hand delivering the pleading to him on October 30, 2019.

16. Mr. Naumann has taken no action to indicate his intent to defend or otherwise participate or respond to the suit since his lawyer withdrew or since he was served with the Fourth Amended Counterclaim.

17. The time allowed to file a response to the suit expired November 13, 2019. *See* FED. R. CIV. P. 15(a)(3).

18. The facts set forth herein are supported by the affidavit of Lisa S. Barkley, attached as Exhibit 1.

19. COFS requests that the Clerk of the Court enter a default against Counter-Defendant Dewayne Naumann, who, although properly served, has not timely responded to COFS's Fourth Amended Counterclaim, and for such further relief as appropriate.

Dated: February 26, 2020

Respectfully submitted,

/s/ Lamont A. Jefferson

Lamont A. Jefferson

State Bar No. 10607800

Lisa S. Barkley

State Bar No. 17851450

JEFFERSON CANO

112 East Pecan Street, Suite 1650

San Antonio, Texas 78205

(210) 988-1811 / Fax: (210) 988-1811

LJefferson@jeffersoncano.com

LBarkley@jeffersoncano.com

**ATTORNEYS FOR DEFENDANTS  
AND COUNTER-PLAINTIFF  
COMPLETE OIL FIELD SERVICES,  
LLC**

**CERTIFICATE OF SERVICE**

I certify that on this 26<sup>th</sup> day of February, 2020, I electronically filed the foregoing instrument with the Clerk of the Court using the CM/ECF system and served the following counsel of record in accordance with the Federal Rules of Civil Procedure:

Michael D. Schwartz  
SCHWARTZ LAW FIRM  
600 Inwood Avenue N.  
Suite 130  
Oakdale, MN 55128  
Mschwartz@mdspalaw.com  
***Counsel for Counter-Defendant  
Mark B. Sylla***

Morris E. "Trey" White III  
VILLA & WHITE LLP  
1100 NW Loop 410, #802  
San Antonio, TX 78213  
[treywhite@villawhite.com](mailto:treywhite@villawhite.com)  
***Counsel for Counter-Defendant  
Tier 1 Sands, LLC***

Rob L. Wiley  
STEWART & WILEY, PLLC  
2202 Timberloch Place, Suite 110  
The Woodlands, TX 77380  
[rwiley@stewartwiley.com](mailto:rwiley@stewartwiley.com)  
***Counsel for David Bravo, Lorena  
Silvestri Bravo and Unlimited Frac  
Sand, LLC d/b/a Frac Sand Unlimited***

The following parties are not represented by legal counsel, and were served with the foregoing instrument by email in accordance with the Federal Rules of Civil Procedure:

Bates Energy Oil & Gas, LLC  
3201 Cherry Ridge  
Bldg. B, Ste. B210  
San Antonio, Texas 78230  
[sbates@tssoil.com](mailto:sbates@tssoil.com)

Equity Liaison Company  
Dewayne Naumann  
3303 Northland Drive  
Suite 307  
Austin, Texas 78721  
[dnaumann@equityliaison.com](mailto:dnaumann@equityliaison.com)

Howard Resources, LLC  
1308 CR 905A  
Joshua, Texas 76058  
[austin@howardresourcesllc.com](mailto:austin@howardresourcesllc.com)

/s/Lisa S. Barkley

Lisa S. Barkley

**AFFIDAVIT OF LISA S. BARKLEY**

STATE OF TEXAS       §  
                                     §  
COUNTY OF BEXAR   §

Before me, the undersigned authority, on this day personally appeared Lisa S. Barkley (“Affiant”), who being first duly sworn on her oath deposes and stated the following:

1. My name is Lisa S. Barkley and I reside in San Antonio, Bexar County, Texas. I have personal knowledge of the facts set forth below in my capacity as counsel for the Counter-Plaintiff in the Complete Oil Field Services, LLC litigation<sup>1</sup> against various Counter-Defendants, including Dewayne Naumann. The facts set forth herein are true and correct based upon my personal knowledge.

2. On February 21, 2019, COFS filed its Fourth Amended Counterclaim adding and removing various claims and allegations from earlier counterclaims. The pleading was served on counsel of record on February 22, 2019 using the CM/ECF system. (Dkt. No.116).

3. Afterwards, COFS made several attempts to serve Counter-Defendant Dewayne Naumann, who by then had no counsel, with the Fourth Amended Counterclaim at his last known address, on Northland Drive in Austin, Texas. COFS’s mailed the Fourth Amended Counterclaim to Dewayne Naumann at his last known address both in May and in September 2019 in accordance with the Federal Rules of Civil Practice and in particular FED. R. CIV. P. 5(b)(2)(C).

4. On October 30, 2019, a private process server retained by COFS provided a document to COFS’s counsel showing that he personally handed the Fourth Amended

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<sup>1</sup> *Bates Energy Oil & Gas, LLC v. Complete Oil Field Services, LLC and Sam Taylor*, Civil Action SA:17-CV-00808-XR, In the United States District Court for the Western District of Texas, San Antonio Division



Counterclaim to Dewayne Naumann at his office at the Northland Drive address. A copy of the process server's documentation is attached as Exhibit 1.

5. Dewayne Naumann has not filed a pleading or otherwise responded to the allegations contained in the Fourth Amended Counterclaim within the time required by FED. R. CIV. P. 15(a)(3), which was, at the latest, November 13, 2019.

6. In particular, he has not filed an answer or other required pleading. He has not taken any action that indicated his intent to defend the claims in the Fourth Amended Counterclaim (e.g., filing a motion under Rule 12 or a motion for summary judgment) or to otherwise participate in the litigation.

7. Dewayne Naumann is not a minor or an incompetent person, and, Affiant does not believe he is currently in military service in large part because of his senior status (age).

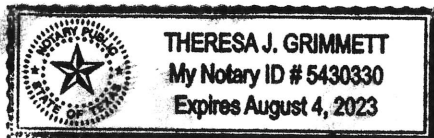
Further Affiant Sayeth Not.

SIGNED ON THIS 26TH DAY OF FEBRUARY, 2020.



\_\_\_\_\_  
Lisa S. Barkley, Affiant

Subscribed and Sworn to Before Me, by Lisa S. Barkley on the 26<sup>th</sup> day of February, 2020.

  
\_\_\_\_\_  
Notary Public, State of Texas

Thomas Process  
605 W. 14th Street  
Austin, TX 78701  
Phone: (512) 320-8330  
74-2954951

**INVOICE**

Invoice #THP-2019008306  
10/30/2019



Lamont Jefferson  
JEFFERSON CANO  
112 E. Pecan Street  
Suite 1650  
San Antonio, TX 78205

Reference Number: Bates Energy Oil & Gas, LLC  
Your Contact: Illianna Perez  
**Case Number: Western SA:17-CV-00808-XR**

Plaintiff:  
**BATES ENERGY OIL & GAS, LLC**

Defendant:  
**COMPLETE OIL FIELD SERVICES LLC, et al**

Received: 10/30/2019 Served: 10/30/2019 3:15 pm PERSONAL SERVICE  
To be served on: DEWAYNE NAUMANN - EQUITY LIAISON COMPANY

**ITEMIZED LISTING**

Line Item	Quantity	Price	Amount
DEWAYNE NAUMANN-3303 Northland Dr, Ste 307, Austin, TX 78731	1.00	75.00	75.00
Copies printed for service (106 pages)	1.00	16.00	16.00
<b>TOTAL CHARGED:</b>			<b>\$91.00</b>
<b>BALANCE DUE:</b>			<b>\$91.00</b>

RETURN / AFFIDAVIT  
PROOF - ATTACHED

Payment is due upon receipt.  
For Your Convenience You May Pay Online at Our Website:  
[www.ThomasProcess.com](http://www.ThomasProcess.com)  
Accrual of Interest at 1.5 % per month will be incurred after 30 days. We Appreciate your business!

**EXHIBIT "1"**

**AFFIDAVIT OF SERVICE**

UNITED STATES DISTRICT COURT  
Western District of Texas

Case Number: SA:17-CV-00808-XR

Plaintiff:

**BATES ENERGY OIL & GAS, LLC**

vs.

Defendant:

**COMPLETE OIL FIELD SERVICES LLC, et al**

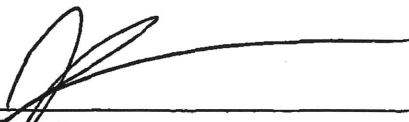
Received these papers on the 30th day of October, 2019 at 12:45 pm to be served on **DEWAYNE NAUMANN - EQUITY LIAISON COMPANY, 3303 Northland Drive, Suite 307, Austin, Travis County, TX 78731.**

I, Jeff Keyton, being duly sworn, depose and say that on the **30th day of October, 2019 at 3:15 pm, I:**

delivered a true copy of the **Defendant/Counter-Plaintiff Complete Oil Field Service, LLC's Fourth Amended Counterclaim (Exhibit "A") including attached Exhibits and cover letter from JeffersonCano dated September 30, 2019** with the date of service endorsed thereon by me, to: **DEWAYNE NAUMANN - EQUITY LIAISON COMPANY** at the address of: **3303 Northland Drive, Suite 307, Austin, Travis County, TX 78731**, and informed said person of the contents therein, in compliance with state statutes.

I certify that I am approved by the Judicial Branch Certification Commission, Misc. Docket No. 05-9122 under rule 103, 501, and 501.2 of the TRCP to deliver citations and other notices from any District, County and Justice Courts in and for the State of Texas. I am competent to make this oath; I am not less than 18 years of age, I am not a party to the above-referenced cause, I have not been convicted of a felony or a crime of moral turpitude, and I am not interested in the outcome of the above-referenced cause.

Subscribed and Sworn to before me on the 30th day of October, 2019 by the affiant who is personally known to me.

  
\_\_\_\_\_  
**Jeff Keyton**  
PSC-735; Exp 7/31/2020

  
\_\_\_\_\_  
**NOTARY PUBLIC**

Our Job Serial Number: THP-2019008306  
Ref: Bates Energy Oil & Gas, LLC



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# JEFFERSON CANO



September 30, 2019

Dewayne Naumann  
3303 Northland Drive, Suite 307  
Austin, Texas 78721

*Served via USPS Mail and CMRRR:  
7017 3380 0001 1587 9839*

Re: Cause No. 5:17-cv-00808-XR; *Bates Energy Oil & Gas, LLC v. Complete Oil Field Services, LLC, et al.*

Dear Mr. Naumann:

We enclose and serve you with a copy of Defendant/Counter-Plaintiff Complete Oil Field Services, LLC's Fourth Amended Counterclaim.

Please let us know if you have any questions, or if you have secured new counsel.

Sincerely,

*/s/ Lisa Barkley*

Lisa Barkley  
Direct dial: 210.988.1805  
[lbarkley@jeffersoncano.com](mailto:lbarkley@jeffersoncano.com)

CC by USPS Mail w/o enclosures: Bates Energy Oil & Gas, LLC  
Equity Liaison Company  
Howard Resources, LLC  
All Counsel (listed below)

*Lamont A. Jefferson  
Michael D. Schwartz  
Morris E. "Trey" White III  
Rob L. Wiley*

**RECEIVED**OCT 30 2019  
@ 12:45 pm**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION****BATES ENERGY OIL & GAS, LLC****v.****COMPLETE OIL FIELD SERVICES  
LLC AND SAM TAYLOR**§  
§  
§  
§  
§  
§**CIVIL ACTION: SA:17-CV-00808-XR**

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**DEFENDANT/COUNTER-PLAINTIFF COMPLETE OIL FIELD SERVICE, LLC'S  
FOURTH AMENDED COUNTERCLAIM**

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Complete Oil Field Services, LLC ("COFS" or "Counter-Plaintiff") files this Fourth Amended Counterclaim against Counter-Defendants Bates Energy Oil & Gas, LLC ("Bates Energy"); Equity Liaison Company, LLC ("ELC" or "ELC/Naumann"); Dewayne D. Naumann ("Naumann"); Unlimited Frac Sand, LLC d/b/a Frac Sand Unlimited ("FSU"); David Bravo ("Bravo"); Lorena Silvestri Bravo, individually and d/b/a Bravo Consulting Services ("Silvestri"); Mark B. Sylla; Howard Resources, LLC ("Howard Resources"); and Tier 1 Sands, LLC ("Tier 1 Sands"). (COFS has settled claims it asserted in previous counterclaims against the Rosenblatt Law Firm, PC ("Rosenblatt" or "Rosenblatt Firm").) COFS respectfully shows the Court as follows:<sup>1</sup>

**I.  
NATURE OF ACTION**

1. Defendant/Counter-Plaintiff Complete Oil Field Services, LLC ("COFS") seeks damages against Counter-Defendants for their unlawful acts, and their wrongful receipt and retention of

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<sup>1</sup> COFS incorporates by reference its earlier requests for temporary and permanent equitable relief, and incorporates by reference the Court's entry of a temporary restraining order on September 13, 2017, and entry of a preliminary injunction on September 29, 2017. Counter-Plaintiff further incorporates by reference its First Amended Counterclaim to the extent appropriate.